

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 11, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRET MICHAEL EMINETH (1) and
MALESA LYNN HALE (2),

Defendants.

No. 4:22-CR-06007-MKD

PROTECTIVE ORDER

ECF No. 38

Before the Court is the parties' Stipulation Regarding Computer Forensic Review Procedures for Child Pornography Contraband, ECF No. 38. The parties move the Court to issue a protective order to establish forensic review procedures under 18 U.S.C. § 3509(m). The Court has reviewed the stipulation, the record, and is fully informed.

Accordingly, **IT IS ORDERED:**

1. The Stipulation Regarding Computer Forensic Review Procedures for Child Pornography Contraband is **ACCEPTED**. The parties Motion for Protective Order, **ECF No. 38**, is **GRANTED**.

1 2. Defendants are charged with federal child exploitation offenses. ECF
2 No. 1. The discovery in this case includes child contraband images and video files.
3 ECF No. 38 at 2. Under 18 U.S.C. § 3509(m), the Court is required to deny defense
4 requests to copy, photograph, duplicate, or otherwise reproduce material constituting
5 child pornography if the United States makes the material reasonably available to
6 Defendant and provides an ample opportunity for the defense to examine it at a
7 government facility.

8 3. In order to comply with 18 U.S.C. § 3509(m), and to allow each
9 Defendant the greatest opportunity to prepare an effective defense in preparation for
10 trial in this matter, the United States will make a forensic copy or “image” of devices
11 and media containing alleged child pornography contraband at issue in the above-
12 referenced case. The United States will make full forensic images reasonably
13 available to each Defendant and provide ample opportunity for the defense team to
14 examine them at a government facility in Spokane, Washington. The United States
15 will also work with counsel for Defendants to make reasonably available a working
16 copy of contraband material at the offices of Homeland Security Investigations in
17 Richland, Washington. The parties may readdress the Court if there is a need for
18 additional or after-hours access during the course of litigation in the event trial or
19 motion hearings require additional forensic review.

1 4. Each defense forensic examination of the full forensic images in
2 Spokane may be conducted in an interview room monitored by closed-circuit
3 television (“CC-TV”), without audio feed. If so, the CC-TV with non-audio feed
4 will ensure the integrity of government agency space and security of its occupants
5 and will not be of sufficient detail or at an angle that would reveal defense strategy.
6 The United States and its agents will make no attempt to record any audio from the
7 workstation and no attempt to observe either defense team’s¹ work product or
8 computer monitor screen at any time. Each defense expert may review the feed to
9 ensure that defense strategy is not being compromised at any time while conducting
10 the forensic review.

11 5. Neither defense team shall make, nor permit to be made, any copies of
12 the alleged child pornography contraband pursuant to this Protective Order, nor will
13 they remove any contraband images from the government facility. Each defense
14 expert will be allowed to copy any file that is not contraband and compile a report
15 (without contraband images/videos) documenting the examination on removable
16 media at the discretion of the defense expert.

17
18 ¹ For purposes of this Protective Order, the term “defense team” refers solely to
19 Defendant’s counsel of record (“defense counsel”), Defendant’s designated expert
20 (“defense expert”), and a defense investigator.

1 6. Any defense counsel and/or designated defense expert will leave at the
2 government facility any equipment, including hard drives, which contain child
3 pornography contraband that is identified during forensic evaluation.

4 7. For the purpose of trial, the United States will make available a digital
5 copy of any government trial exhibit that contains contraband, which will be kept in
6 the custody and control of the case agent. Upon reasonable notice by the defense,
7 the case agent will also maintain for trial digital copies of any proposed defense
8 exhibit that contains contraband. If the defense team intends to offer, publish, or
9 otherwise utilize any prosecution or defense exhibit contained on the digital copy
10 maintained by the case agent during trial, the case agent shall assist the defense team
11 in publishing or utilizing the exhibit that contains contraband upon reasonable
12 notification by the defense team.

13 8. This protective order shall apply to any attorneys who subsequently
14 become counsel of record, along with their defense teams, without the need to renew
15 or alter it.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
17 Order and provide copies to counsel.

18 DATED March 11, 2022.

19 s/Mary K. Dimke
20 MARY K. DIMKE
UNITED STATES DISTRICT JUDGE